



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/464,610	12/15/99	SCHMITT	P 498-53 CON/R

HOFFMANN & BARON LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

QM12/0915

EXAMINER

JACKSON, S

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED:

09/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/464,610

Applicant(s)
Schmitt, et al.

Examiner
Suzette Jackson

Group Art Unit
3738



☒ Responsive to communication(s) filed on Aug 7, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-32 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 6-10 is/are allowed.

☒ Claim(s) 1, 2, 11, 12, 15-22, and 24-30 is/are rejected.

☒ Claim(s) 3-5, 13, 14, 23, 31, and 32 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Dec 15, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3738

DETAILED ACTION

1. Applicant's amendment dated 07 August 2000 has been received in application serial number 09/464,610.

Amendments to Reissue

2. Applicant is notified that any subsequent amendment (specifically the amendment filed 07 August 2000) to the specification and/or claims must comply with 37 CFR 1.121(e). Applicant must show that all the text (words) are additions relative to the patent itself and not relative to the most recent previously filed version of the claim (as in regular applications, where underlining and bracketing point out only the latest revisions to the claims).

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the warp yarns, weft yarns, denier of the yarns, any multifilament yarns and picks per layer per inch (as stated in claims 19-23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Art Unit: 3738

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 11, 12, 15, 17, 18, and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Trescony et al. USPN 5,282,847 which discloses the invention as claimed comprising : A woven textile graft (col. 4, lines 24-29) with an elongate tubular graft having a wall thickness of dimension such that the graft body is capable of being radially compressed for insertion into a delivery catheter; having a plurality of longitudinally spaced wave-like crimps along the length thereof on both sides of the tubular body with no less than 8 crimps per cm; wherein the wall thickness is no greater than about 0.16mm (col. 3, line 45), and it is inherent that the graft can be deployed by compression for insertion into a catheter.

Claim Rejections - 35 U.S.C. § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3738

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 16, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al. 5,282,847 in view of Lazarus USPN 5,275,222. Trescony et al. has been disclosed above noting figures 1-6 however Trescony et al. does not specify the use of a radiopaque marker or complete deployment apparatus. Lazarus teaches the use of a radiopaque marker made from such materials as platinum tungsten alloy wire with a diameter of 0.003" and the use of a catheter for graft deployment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to take the invention of Trescony and deploy the graft with a catheter apparatus as taught by Lazarus and to incorporate the radiopaque marker as a way of tracking the proper placement of the graft to the appropriate vessel.

8. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al. in view of Liebig et al. 7,047,252. Trescony et al. has been disclosed above, however the details of the weaving process are not specified. Liebig et al. teaches the weft, warp, and denier of the woven thread (col. 3, lines 54-65). It would have been obvious to take the graft of Trescony et al. and utilized the weaving techniques of Liebig et al. because it would ensure a graft tubing with uniform strength and rigidity along its length.

Art Unit: 3738

Allowable Subject Matter

9. Claims 3-5, 13, 14, 23, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 6-10 are allowed.

Response to Arguments

11. Applicant's arguments filed 07 August 2000 have been fully considered but they are not persuasive. Applicant contends that the objection to the drawings should be reconsidered. The examiner has reconsidered the statements regarding the cross section of figures 1 and 2.

Although these cross sections show what is meant to be a woven structure, they do not illustrate any of the claimed details such as wefts warps and denier for example please see Patent No.

Koch 4,892,539 Figures 1-4 which illustrate woven material.

12. Applicant contends that the reference of Trescony et al. does not disclose a plurality of longitudinally spaced wave-like crimps. Trescony does indeed show longitudinally spaced wave-like crimps (see figures 1-4). It is the examiner's opinion that the applicant's invention more or less illustrates a crimped pattern in the circumferential direction; wherein each crimp is in a direction around the tube (See Bokros et al 4,164,045 for example).


Art Unit: 3738


Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communication regarding this application should be directed to examiner Suzette Jackson at (703) 308-6516. If you are unable to reach me, please contact my supervisor, Vincent Millin, at (703) 308-1065. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator for Sector 3700.


S. Jackson
11 September 2000


David H. Willse
Primary Examiner